



California Fair Political Practices Commission

June 20, 1989

Honorable David Roberti
President Pro Tempore
State Senate
P.O. Box 2856
Los Angeles, CA 90028

Re: Your Request for Advice
Our File No. A-89-316

Dear Senator Roberti:

This is in response to your request for advice regarding the use of campaign funds under the provisions of the Political Reform Act (the "Act").¹ Your letter also raises questions under other provisions of law such as Elections Code Section 12401 which prohibits personal use of campaign funds. We do not provide advice concerning laws other than the Act. You may desire to consult with the Attorney General regarding other laws which may apply to your decision.

QUESTIONS

1. May you use campaign funds received before January 1, 1989, in excess of the contribution limits imposed by Proposition 73 to purchase an automobile?
2. If you file for re-election or create a campaign committee for re-election, may you continue to use the automobile for officeholder purposes?
3. If you use the automobile for campaign purposes, does your re-election committee have to buy back the automobile with campaign funds received after January 1, 1989, or may you pro-rate the cost of the automobile between your officeholder and re-election funds?

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

CONCLUSIONS

1. You may use campaign funds received before January 1, 1989, in excess of the contribution limits imposed by Proposition 73 to purchase an automobile if purchase and use of the automobile constitute officeholder expenses.

2. If you file for re-election or create a campaign committee for re-election, you may continue to use the automobile for officeholder purposes.

3. If you use the automobile for campaign purposes, your officeholder account must be reimbursed for the reasonable cost of the use of the automobile by your re-election committee.

FACTS

You are the President Pro Tempore of the California Senate. The Senate Rules Committee has provided you with a leased car for your use. You want to purchase this car with campaign funds received prior to January 1, 1989, and which exceed the contribution limits imposed by Proposition 73 ("restricted funds"). You want to use this car for officeholder purposes and, at a later date, you may want to use the vehicle for campaign purposes.

ANALYSIS

Proposition 73, passed by the voters on June 8, 1988, included provisions limiting contributions to political campaigns and the use of campaign funds as follows.

Section 85306 restricts the use of campaign funds received before January 1, 1989, which exceed the contribution limits. These funds may be used for any lawful purpose other than to support or oppose a candidacy for elective office.² Lawful purpose means any purpose other than personal use. (Regulation 18536.2, copy enclosed.)

An expenditure to support or oppose a candidacy for elective office includes:

- (1) Any monetary or nonmonetary contribution from a candidate or committee to another candidate for state or local office, a committee controlled by one or more candidates for state or local office, or a committee formed primarily to support or

² This is the interpretation of Section 85306 under the preliminary injunction issued on May 15, 1989, by the United States District Court, Eastern District of California, in the case of Service Employees International Union v. Fair Political Practices Commission, Case No. CIVS-89-0433 LKK-JFM. Further hearing on this issue is scheduled for August 11, 1989.

oppose one or more candidates for state or local office.

Regulation 18536.2(b)(1).

Thus, although campaign funds in excess of the contribution limits received prior to January 1, 1989, may be set aside into a "restricted account" and used for any lawful purpose, they may not be used to support your candidacy for re-election to elective office.

On the other hand, restricted funds may be used for any lawful purpose other than to support or oppose your candidacy. Thus, if you incur officeholder expenses and they are not related to your candidacy for office, restricted funds may be used to pay for them. Commission regulations do not directly define "officeholder expenses" at this time. However, Regulation 18525 (copy enclosed) defines the types of expenses which must be paid out of an incumbent elected officer's campaign bank account. Items which are not payable from this account are not considered to support or oppose a candidacy and this would include "officeholder expenses."

Regulation 18525(a) requires payment of expenses such as fundraising events and campaign strategy expenses for election to a future term of office out of the campaign bank account for election to a future term of office. Additionally, payments for mass mailings, political advertising, opinion polls and surveys must also be made out of the campaign account. By implication, other expenses may be considered officeholder expenses payable out of your officeholder account.

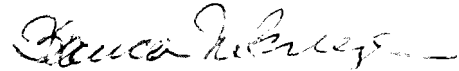
In your request for advice you have stated that you want to use funds in your restricted account to purchase a car. This expenditure would be permissible under the Act if the vehicle is not going to be used for one of the purposes enumerated in subdivision (a) of Regulation 18525. Conversely, if the vehicle is exclusively used for one of the purposes set forth in that subdivision, it will be a campaign expense and restricted funds cannot be used for its purchase.

Should you determine that purchase of the automobile is an officeholder expense, you may subsequently use it for campaign purposes if you reimburse your officeholder account from your campaign account for the reasonable cost of that use.

We trust this letter adequately responds to your inquiry. Should you have any further questions related to this matter, do not hesitate to call me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel

A handwritten signature in cursive script, appearing to read "Blanca M. Breeze", followed by a horizontal line.

By: Blanca M. Breeze
Counsel, Legal Division

KED:plh

Enclosures



Senator David Roberti

May 12, 1989

Ms. Jeanne Pritchard
Fair Political Practices
Commission
428 "J" Street, #800
Sacramento, CA 95814

Dear Ms. Pritchard:

This is to request a reply to the following questions:

Question: If I buy the used lease car from Senate Rules, can I use old (restricted) campaign money?

Question: If I file for re-election or file a campaign committee for re-election, what must I do with the car? Can I still use it for office-holder purposes? If I use it for a campaign purpose, do I have to buy back, out of new funds, the entire cost of the car or can I pro-rate the respective amounts and reimburse the restricted committee that way?

Thank you for your prompt reply to this request.

Sincerely,

A handwritten signature in cursive script that reads "David Roberti".

DAVID ROBERTI

cc: Shirley Wechsler

89-316



Senator David Roberti

May 12, 1989

Ms. Jeanne Pritchard
Fair Political Practices
Commission
428 "J" Street, #800
Sacramento, CA 95814

Dear Ms. Pritchard:

This is to request a reply to the following questions:

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Thank you for your prompt reply to this request.

Sincerely,

A handwritten signature in cursive script that reads "David Roberti".

DAVID ROBERTI

cc: Shirley Wechsler



California Fair Political Practices Commission

May 24, 1989

Honorable David Roberti
State Senator
P.O. Box 2856
Los Angeles, CA 90028

Re: Letter No. 89-316

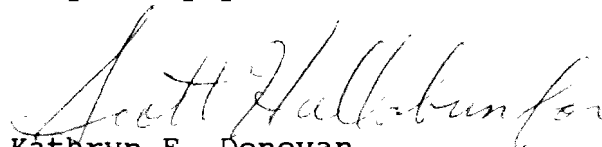
Dear Senator Roberti:

Your letter requesting advice under the Political Reform Act was received on May 22, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Blanca Breeze an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,


Kathryn E. Donovan
General Counsel

KED:plh